



February 20, 2004

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## ENGROSSED SENATE BILL No. 469

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DIGEST OF SB 469 (Updated February 18, 2004 5:53 pm - DI 108)

**Citations Affected:** IC 23-2.

**Synopsis:** Securities and loan brokers. Voids provisions in an agreement to purchase a security that would waive compliance with securities law or a rule or order made under securities law. Provides a procedure for an issuer of securities to respond to comments regarding an application for registration made by the securities division. Permits the appointment of a securities division attorney to serve as a special deputy prosecutor in actions arising under securities law. Prohibits the issuance of an interpretive opinions by the securities commissioner concerning an activity that occurred before or is occurring on the date that the opinion is requested. Requires that notice and opportunity to be heard must be provided to a person accused of violating securities law, rather than requiring that a hearing occur as provided by current law. Prohibits various deceptive practices by a person that supplies information concerning securities. Provides that an administrative action under securities law survives the death of a person who might have been a respondent. Makes changes to definitions used in the loan broker statutes. Exempts persons engaged in certain federally regulated transactions from the requirements of the loan broker law.

**Effective:** July 1, 2004.

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**Clark, Paul, Zakas, Lanane**

(HOUSE SPONSORS — BARDON, RIPLEY)

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January 13, 2004, read first time and referred to Committee on Rules and Legislative Procedure.

January 20, 2004, pursuant to Senate Rule 65(b) reassigned to Committee on Insurance and Financial Institutions.

January 29, 2004, amended, reported favorably — Do Pass.

February 3, 2004, read second time, amended, ordered engrossed.

February 4, 2004, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 6, 2004, read first time and referred to Committee on Financial Institutions.

February 19, 2004, amended, reported — Do Pass.

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ES 469—LS 7275/DI 108+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 469

A BILL FOR AN ACT to amend the Indiana Code concerning  
business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 23-2-1-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The following securities are  
3 exempted from the registration requirements of section 3 of this  
4 chapter:

5 (1) A security (including a revenue obligation) issued or  
6 guaranteed by the United States, a state, a political subdivision of  
7 a state, or an agency or corporate or other instrumentality of one  
8 (1) or more of the foregoing or a certificate of deposit for any of  
9 the foregoing.

10 (2) A security issued or guaranteed by Canada, a Canadian  
11 province, a political subdivision of a Canadian province, an  
12 agency, or corporate or other instrumentality of one (1) or more  
13 of the foregoing, or any other foreign government with which the  
14 United States currently maintains diplomatic relations, if the  
15 security is recognized as a valid obligation by the issuer or  
16 guarantor.

17 (3) A security issued by and representing an interest in or a debt

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of, or guaranteed by a bank organized under the laws of the United States, a bank, savings institution, or trust company organized and supervised under the laws of a state, a federal savings association, a savings association organized under the laws of a state and authorized to do business in Indiana, a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state, or a corporation or organization whose issuance of securities is required by any other law to be passed upon and authorized by the department of financial institutions or by a federal agency or authority.

(4) A security issued or guaranteed by a railroad or other common or contract carrier, a public utility, or a common or contract carrier or public utility holding company. However, an issuer or guarantor must be subject to regulation or supervision as to the issuance of its own securities by a public commission, board, or officer of the government of the United States, of a state, territory, or insular possession of the United States, of a municipality located in a state, territory, or insular possession, of the District of Columbia, or of the Dominion of Canada or a province of Canada.

(5) A security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, or on any other exchange approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(6) A promissory note, draft, bill of exchange, or banker's acceptance that is evidence of:

- (A) an obligation;
- (B) a guarantee of an obligation;
- (C) a renewal of an obligation; or
- (D) a guarantee of a renewal of an obligation;

to pay cash within nine (9) months after the date of issuance, excluding grace days, that is issued in denominations of at least fifty thousand dollars (\$50,000) and receives a rating in one (1) of the three (3) highest rating categories from a nationally recognized statistical rating organization.

(7) A security issued in connection with an employee stock purchase, savings, pension, profit-sharing, or similar benefit plan.

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(8) A security issued by an association incorporated under IC 15-7-1.

(9) A security that is an industrial development bond (as defined in Section 103(b)(2) of the Internal Revenue Code of 1954) the interest of which is excludable from gross income under Section 103(a)(1) of the Internal Revenue Code of 1954 if, by reason of the application of paragraph (4) or (6) of Section 103(b) of the Internal Revenue Code of 1954 (determined as if paragraphs (4)(A), (5), and (7) were not included in Section 103(b)), paragraph (1) of Section 103(b) does not apply to the security.

(10) A security issued by a nonprofit corporation that meets the requirements of Section 103(e) of the Internal Revenue Code of 1954 and is designated by the governor as the secondary market for guaranteed student loans under IC 20-12-21.2.

(11) A security designated or approved for designation upon notice of issuance on the National Association of Securities Dealers Automatic Quotation National Market System or any other national market system approved and designated by the commissioner, any other security of the same issuer that is of senior rank or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing.

(12) A security that is a "qualified bond" (as defined in Section 141(e) of the Internal Revenue Code, as amended).

(b) The following transactions are exempted from the registration requirements of section 3 of this chapter:

(1) An isolated nonissuer offer or sale, whether effected through a broker-dealer or not.

(2) A nonissuer sale effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy.

(3) A nonissuer offer or sale by a registered broker-dealer, acting either as principal or agent, of issued and outstanding securities if the following conditions are satisfied:

(A) The securities are sold at prices reasonably related to the current market price at the time of sale, and if the registered broker-dealer is acting as agent, the commission collected by the registered broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

(B) The securities do not constitute an unsold allotment to or subscription by the broker-dealer as a participant in the

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distribution of the securities by the issuer or by or through an underwriter.

(C) Either:

(i) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen (18) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is published in a securities manual approved by the commissioner;

(ii) the issuer is required to file reports with the Securities and Exchange Commission pursuant to sections 13 and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and is not delinquent in the filing of the reports on the date of the sale; or

(iii) information consisting of the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than sixteen (16) months prior to the date of the sale, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations is on file with the commissioner. The information required by this item to be on file with the commissioner must be on a form and made in a manner as the commissioner prescribes. The fee for the initial filing of the form shall be twenty-five dollars (\$25). The fee for the annual renewal filing shall be fifteen dollars (\$15). When a filing is withdrawn or is not completed by the issuer, the commissioner must retain the filing fee.

(D) There has been compliance with section 6(1) of this chapter.

(E) Unless the issuer is registered under the Investment Company Act of 1940, all the following must be true at the time of the transaction:

(i) The security belongs to a class that has been in the hands of the public for at least ninety (90) days.

(ii) The issuer of the security is a going concern, is actually engaged in business, and is not in bankruptcy or receivership.

(iii) Except as permitted by order of the commissioner, the issuer and any predecessors have been in continuous operation for at least five (5) years. An issuer or predecessor is in continuous operation only if the issuer or predecessor

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has gross operating revenue in each of the five (5) years immediately preceding the issuer's or predecessor's claim of exemption and has had total gross operating revenue of at least two million five hundred thousand dollars (\$2,500,000) for those five (5) years or has had gross operating revenue of at least five hundred thousand dollars (\$500,000) in not less than three (3) of those five (5) years.

The commissioner may revoke the exemption afforded by this subdivision with respect to any securities by issuing an order:

(i) if the commissioner finds that the further sale of the securities in this state would work or tend to work a fraud on purchasers of the securities;

(ii) if the commissioner finds that the financial condition of the issuer is such that it is in the public interest and is necessary for the protection of investors to revoke or restrict the exemption afforded by this subsection; or

(iii) if the commissioner finds that, due to the limited number of shares in the hands of the public or due to the limited number of broker-dealers making a market in the securities, there is not a sufficient market for the securities so that there is not a current market price for the securities.

(4) A transaction between the issuer or other person on whose behalf the offering is made by an underwriter, or among underwriters.

(5) A transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness, is offered and sold as a unit.

(6) A transaction by an executor, administrator, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or a person acting in a trust or fiduciary capacity where the transaction is effected pursuant to the authority of or subject to approval by a court of competent jurisdiction.

(7) A transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) An offer or sale to a bank, a savings institution, a trust company, an insurance company, an investment company (as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-52)), a pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

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(9) The offer or sale of securities of an issuer:

(i) to a person who is:

(A) a director, an executive officer, a general partner, an administrator, or a person who performs similar functions for or who is similarly situated with respect to the issuer;

(B) a director, an executive officer, or a general partner of a general partner of the issuer; or

(C) any other natural person employed on a full-time basis by the issuer as an attorney or accountant if the person has been acting in this capacity for at least one (1) year immediately prior to the offer or sale;

(ii) to an entity affiliated with the issuer;

(iii) if the issuer is a corporation, to a person who is the owner of shares of the corporation or of an affiliated corporation representing and possessing ten percent (10%) or more of the total combined voting power of all classes of stock (of the corporation or affiliated corporation) issued and outstanding and who is entitled to vote; or

(iv) if the issuer is a limited liability company, to a person who is the owner of an interest in the limited liability company representing and possessing at least ten percent (10%) of the total combined voting power of all classes of such interests (of the limited liability company or affiliated limited liability company) issued and outstanding.

(10) The offer or sale of a security by the issuer of the security if all of the following conditions are satisfied:

(A) The issuer reasonably believes that either:

(i) there are no more than thirty-five (35) purchasers of the securities from the issuer in an offering pursuant to this subsection, including purchasers outside Indiana; or

(ii) there are no more than twenty (20) purchasers in Indiana.

In either case, there shall be excluded in determining the number of purchasers a purchaser whom the issuer reasonably believes to be an accredited investor or who purchases the securities after they are registered under this chapter.

(B) The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation.

(C) The issuer reasonably believes that each purchaser of the securities is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for

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reasonable belief may include:

(i) obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and

(ii) placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under section 3 of this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities.

(D) The issuer:

(i) files with the commissioner and provides to each purchaser in this state an offering statement that sets forth all material facts with respect to the securities; and

(ii) reasonably believes immediately before making a sale that each purchaser who is not an accredited investor either alone or with a purchaser representative has knowledge and experience in financial and business matters to the extent that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(E) If the aggregate offering price of the securities in an offering pursuant to this subdivision (including securities sold outside of Indiana) does not exceed five hundred thousand dollars (\$500,000), the issuer is not required to comply with clause (D) if the issuer files with the commissioner and provides to each purchaser in Indiana the following information and materials:

(i) copies of all written materials, if any, concerning the securities that have been provided by the issuer to any purchaser; and

(ii) unless clearly presented in all written materials, a written notification setting forth the name, address, and form of organization of the issuer and any affiliate, the nature of the principal businesses of the issuer and any affiliate, and the information required in section 5(b)(1)(B), 5(b)(1)(C), 5(b)(1)(D), 5(b)(1)(E), 5(b)(1)(H), and 5(b)(1)(I) of this chapter.

(F) The commissioner does not disallow the exemption provided by this subdivision within ten (10) full business days after receipt of the filing required by clause (D) or (E). The issuer may make offers (but not sales) before and during the

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ten (10) day period, if:

(i) each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and

(ii) no enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received (directly or indirectly) from a prospective purchaser, before the expiration of the ten (10) day period and the vacation of an order disallowing the exemption.

(G) The issuer need not comply with clause (D), (E), or (F) if:

(i) each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;

(ii) there are not more than fifteen (15) purchasers in Indiana and each Indiana purchaser is an accredited investor or is a purchaser described in item (i); or

(iii) the aggregate offering price of the securities, including securities sold outside Indiana, does not exceed five hundred thousand dollars (\$500,000), the total number of purchasers, including purchasers outside of Indiana, does not exceed twenty-five (25) and each purchaser either receives all of the material facts with respect to the security or is an accredited investor or a purchaser described in item (i).

(H) If the issuer makes or is required to make a filing with the commissioner under clause (D) or (E), the issuer must also file with the commissioner at the time of the filing the consent to service of process required by section 16 of this chapter. The issuer shall also file with the commissioner, at the times and in the forms as the commissioner may prescribe, notices of sales made in reliance upon this subdivision.

(I) The commissioner may by rule deny exemption provided in this subdivision to a particular class of issuers, or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter.

(11) An offer or sale of securities to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration

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(other than a standby commission) is paid or given for soliciting a security holder in this state.

(12) An offer (but not a sale) of a security for which registration statements or applications have been filed under this chapter and the Securities Act of 1933 (15 U.S.C. 77a-77aa), if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either law.

(13) The deposit of shares under a voting-trust agreement and the issue of voting-trust certificates for the deposit.

(14) The offer or sale of a commodity futures contract.

(15) The offer or sale of securities to or for the benefit of security holders incident to a vote by the security holders pursuant to the articles of incorporation or applicable instrument, on a merger or share exchange under IC 23-1-40 or the laws of another state, reclassification of securities, exchange of securities under IC 28-1-7.5, or sale of assets of the issuer in consideration of the issuance of securities of the same or another issuer.

(16) A limited offering transactional exemption, which may be created by rule adopted by the commissioner. The exemption must further the objectives of compatibility with federal exemptions and uniformity among the states.

(c) The commissioner may consider and determine if a proposed sale, transaction, issue, or security is entitled to an exemption accorded by this section. The commissioner may decline to exercise the commissioner's authority as to a proposed sale, transaction, issue, or security. An interested party desiring the commissioner to exercise the commissioner's authority must submit to the commissioner a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which must be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of one hundred dollars (\$100). After notice to the interested parties as the commissioner determines is proper and after a hearing, if any, the commissioner may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption claimed. An order entered, unless an appeal is taken from it in the manner prescribed in section 20 of this chapter, is binding upon the commissioner and upon all interested parties, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement submitted.

(d) The commissioner may by order deny or revoke an exemption specified in subsection (a)(6), (a)(7), or (b) with respect to a specific

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security or transaction, if the commissioner finds that the securities to which the exemption applies would not qualify for registration under sections 4 and 5 of this chapter. No order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the order, and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 3 of this chapter by reason of an offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

(e) If, with respect to an offering of securities, any notices or written statements are required to be filed with the commissioner under subsection (b)(10), the first filing made with respect to the offering must be accompanied by a filing fee of one hundred dollars (\$100).

**(f) A condition, stipulation, or provision requiring a person acquiring a security to waive compliance with this chapter or a rule or order under this chapter is void.**

SECTION 2. IC 23-2-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) An application for registration may be filed by:

- (1) the issuer;
- (2) any other person on whose behalf the offering is to be made;
- or
- (3) a registered broker-dealer.

(b) A person filing an application for registration shall pay a filing fee of one-twentieth of one percent (0.05%) of the maximum aggregate offering price at which the registered securities are to be offered in Indiana, but the fee may not be less than two hundred fifty dollars (\$250) and may not be more than one thousand dollars (\$1,000).

(c) When an application for registration under subsection (b) is

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1 withdrawn before the effective date or a preeffective stop order is  
 2 entered under section 7 of this chapter, the commissioner shall retain  
 3 two hundred fifty dollars (\$250) of the fee.

4 (d) A person filing an amendment to an effective registration which  
 5 requires an order of the commissioner shall pay a twenty-five dollar  
 6 (\$25) filing fee.

7 (e) An application for registration shall specify:

8 (1) the amount of securities to be offered in this state;

9 (2) the states in which a registration statement or similar  
 10 document in connection with the offering has been or is to be  
 11 filed; and

12 (3) an adverse order, judgment, or decree entered in connection  
 13 with the offering by the regulatory authorities in each state or by  
 14 a court or the Securities and Exchange Commission.

15 (f) A document filed under this chapter within five (5) years  
 16 preceding the filing of an application for registration may be  
 17 incorporated by reference in the application for registration if the  
 18 document is currently accurate.

19 (g) The commissioner may by rule or otherwise permit the omission  
 20 of an item of information or document from an application for  
 21 registration.

22 (h) In the case of a nonissuer distribution, any part of the  
 23 information that might otherwise be required under section 5 of this  
 24 chapter or subsection (i) need not be furnished if the person filing the  
 25 application for registration produces evidence to the reasonable  
 26 satisfaction of the commissioner that the person, or the persons on  
 27 whose behalf the distribution is to be made, cannot furnish that part of  
 28 the required information without unreasonable effort or expense.

29 (i) A registration is effective for:

30 (1) two (2) years from its effective date; or

31 (2) a shorter period during which the security is being offered or  
 32 distributed in a nonexempted transaction by or for the account of  
 33 the issuer or the person on whose behalf the offering is being  
 34 made or by an underwriter or broker-dealer who is still offering  
 35 part of an unsold allotment or subscription taken by the  
 36 underwriter or broker-dealer as a participant in the distribution,  
 37 except during the time a stop order is in effect under section 7 of  
 38 this chapter.

39 (j) So long as a registration is effective, the commissioner may by  
 40 rule or order require the person who filed the application for  
 41 registration to file reports, not more often than quarterly, to keep  
 42 reasonably current the information contained in the application for

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1 registration and to disclose the progress of the offering.

2 (k) The commissioner may by rule or order require as a condition of  
3 registration by qualification or coordination:

4 (1) that a security issued within the past three (3) years or to be  
5 issued to a promoter for a consideration substantially different  
6 from the public offering price, or to a person for a consideration  
7 other than cash, be deposited in escrow; and

8 (2) that the proceeds from the sale of the registered security be  
9 impounded until the issuer receives a specified amount.

10 The commissioner may by rule or order determine the conditions of an  
11 escrow or impounding required under this subsection, but the  
12 commissioner may not reject a depository solely because of location in  
13 another state.

14 (l) No transferable share is exempt from registration under section  
15 2(b)(3) of this chapter or is qualified for registration under sections 4  
16 or 5 of this chapter unless the issuer has designated a qualified transfer  
17 agent to handle all transfers. The commissioner may adopt rules to  
18 implement this subsection. The commissioner may by rule or order  
19 exempt an issuer, wholly or partially, from the requirements of this  
20 subsection.

21 (m) A registration statement may be amended after its effective date  
22 to increase the securities specified to be offered and sold if the public  
23 offering price and underwriters' discounts and commissions are not  
24 changed from the amounts reported to the commissioner. An  
25 amendment becomes effective upon an order of the commissioner. A  
26 person filing an amendment must pay a late registration fee of  
27 twenty-five dollars (\$25) and a filing fee under subsection (b) for the  
28 additional securities proposed to be offered. An amendment relates  
29 back to the date of the sale of additional securities being registered if  
30 the amendment is filed within three (3) months after the date of the sale  
31 and the additional filing fee and late registration fee are paid.

32 (n) As permitted by Section 106(c) of the Secondary Mortgage  
33 Market Enhancement Act of 1984 (15 U.S.C. 77r-1(c)), securities that  
34 are offered and sold pursuant to Section 4(5) of the Securities Act of  
35 1933 or that are mortgage-related securities (as that term is defined in  
36 Section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C.  
37 78c(a)(41)):

38 (1) must comply with all applicable:

39 (A) registration and qualification requirements of this chapter;  
40 and

41 (B) rules adopted by the commissioner; and

42 (2) shall not be treated as obligations issued by the United States

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for the purposes of this chapter.

(o) If:

(1) the division:

(A) does not approve an application for registration by coordination or qualification; and

(B) notifies the applicant not later than ten (10) days after the date the application was not approved of a deficiency in the application that, if satisfied, would allow the approval of the application;

the applicant may satisfy the deficiency within sixty (60) days after the date described in clause (B); and

(2) an applicant does not satisfy the deficiency described in subdivision (1):

(A) the application is considered abandoned;

(B) the issuer does not receive a refund of the application fee; and

(C) no further action is required by the division.

SECTION 3. IC 23-2-1-15, AS AMENDED BY P.L.270-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

(1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and

(2) shall fix their compensation with the approval of the budget agency.

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing stating the reasons for dismissal. Within fifteen (15) days after dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing party was dismissed for a political, social, religious, or racial

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reason, the appealing party shall be reinstated to the appealing party's position without loss of pay. In all other cases, if the decision is favorable to the appealing party, the secretary of state shall follow the findings and recommendations of the board, which may include reinstatement and payment of salary or wages lost. The hearing and any subsequent proceedings or appeals shall be governed by the provisions of IC 4-15-2 and IC 4-21.5.

(c) Fees and funds of whatever character accruing from the administration of this chapter shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of state in the general fund of the state. Expenses incurred in the administration of this chapter shall be paid from the general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However, costs of investigations recovered under sections 16(d) and 17.1(c) of this chapter shall be deposited with the treasurer of state to be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter. The funds in the account do not revert to the general fund at the end of any fiscal year.

(d) In connection with the administration and enforcement of the provisions of this chapter, the attorney general shall render all necessary assistance to the securities commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the securities commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office.

(e) Neither the secretary of state, the securities commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this chapter.

(f) The commissioner, subject to the approval of the secretary of state, may adopt rules, orders, and forms necessary to carry out this chapter, including rules and forms concerning registration statements, applications, reports, and the definitions of any terms if the definitions are consistent with this chapter. The commissioner may by rule or order

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allow for exemptions from registration requirements under sections 3 and 8 of this chapter if the exemptions are consistent with the public interest and this chapter.

(g) The provisions of this chapter delegating and granting power to the secretary of state, the securities division, and the securities commissioner shall be liberally construed to the end that:

(1) the practice or commission of fraud may be prohibited and prevented;

(2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and

(3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based on the securities division's investigations is meritorious:

(1) the commissioner or a designee empowered by the commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;

(2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, **which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;**

(3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and

(4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:

(A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have

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1           been committed; and

2           (B) prosecute the alleged offense.

3           (i) The securities commissioner shall take, prescribe, and file the  
4           oath of office prescribed by law. The securities commissioner, senior  
5           investigator, and each deputy are police officers of the state and shall  
6           have all the powers and duties of police officers in making arrests for  
7           violations of this chapter, or in serving any process, notice, or order  
8           connected with the enforcement of this chapter by whatever officer or  
9           authority or court issued. The securities commissioner, the deputy  
10          commissioners for enforcement, and the investigators comprise the  
11          enforcement department of the division and are considered a criminal  
12          justice agency for purposes of IC 5-2-4 and IC 10-13-3.

13          (j) The securities commissioner and each employee of the securities  
14          division shall be reimbursed for necessary hotel and travel expenses  
15          when required to travel on official duty. Hotel and travel  
16          reimbursements shall be paid in accordance with the travel regulations  
17          prescribed by the budget agency.

18          (k) It is unlawful for the secretary of state, the securities  
19          commissioner, or the securities division's employees to use for personal  
20          benefit information that is filed with or obtained by the securities  
21          division and that is not made public. No provision of this chapter  
22          authorizes the secretary of state, the securities commissioner, or the  
23          employees of the securities division to disclose information except  
24          among themselves, or when necessary or appropriate, in a proceeding  
25          or investigation under this chapter. No provision of this chapter either  
26          creates or derogates from a privilege that exists at common law or  
27          otherwise when documentary or other evidence is sought under a  
28          subpoena directed to the secretary of state, the securities commissioner,  
29          or the securities division or its employees.

30          (l) The commissioner may honor requests from interested persons  
31          for interpretative opinions and from interested persons for  
32          determinations that the commissioner will not institute enforcement  
33          proceedings against specified persons for specified activities. A  
34          determination not to institute enforcement proceedings must be  
35          consistent with this chapter. **A person may not request an**  
36          **interpretive opinion concerning an activity that:**

37                **(1) occurred before; or**

38                **(2) is occurring on;**

39          **the date that the opinion is requested.** The commissioner shall charge  
40          a fee of one hundred dollars (\$100) for an interpretative opinion or  
41          determination.

42          SECTION 4. IC 23-2-1-19 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) A person who offers or sells a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation, who may sue either at law or in equity to rescind the transaction or to recover the consideration paid, together, in either case, with interest as computed in subsection (g)(1), plus costs, and reasonable attorney's fees, less the amount of any cash or other property received on the security upon the tender of the security by the person bringing the action or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less:

- (1) the value of the security when the buyer disposed of the security; and
- (2) the interest as computed in subsection (g)(1) on the value of the security from the date of disposition.

(b) A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation. The other party to the transaction may bring an action to rescind the transaction or for damages, together, in either case, with reasonable attorney's fees, upon the tender of the consideration received by the person bringing the action.

(c) A person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues analyses or reports concerning securities and:

- (1) violates section 8, 12.1(b), ~~or 14~~, **or 26** of this chapter;
- (2) employs a device, scheme, or artifice to defraud a person; or
- (3) engages in an act that operates or would operate as fraud or deceit upon a person;

is liable to the other person, who may bring an action to recover any consideration paid for advice, any loss due to advice, interest at eight percent (8%) each year from the date consideration was paid, costs, and reasonable attorney's fees less the value of cash or property received

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1 due to the advice. It is a defense to an action brought for a violation of  
 2 section 12.1(b) **or 26** of this chapter that the person accused of the  
 3 violation did not know of the violation and, exercising reasonable care,  
 4 could not have known of the violation.

5 (d) A person who directly or indirectly controls a person liable  
 6 under subsection (a), (b), or (c), a partner, officer, or director of the  
 7 person, a person occupying a similar status or performing similar  
 8 functions, an employee of a person who materially aids in the conduct  
 9 creating the liability, and a broker-dealer or agent who materially aids  
 10 in the conduct are also liable jointly and severally with and to the same  
 11 extent as the person, unless the person who is liable sustains the burden  
 12 of proof that the person did not know, and in the exercise of reasonable  
 13 care could not have known, of the existence of the facts by reason of  
 14 which the liability is alleged to exist. There is contribution as in cases  
 15 of contract among the several persons liable.

16 (e) A tender specified in this section may be made at any time  
 17 before entry of judgment.

18 (f) A cause of action under this statute survives the death of a person  
 19 who might have been a plaintiff or defendant.

20 (g) Action under this section shall be commenced within three (3)  
 21 years after discovery by the person bringing the action of a violation of  
 22 this chapter, and not afterwards. No person may sue under this section:

23 (1) if that person received a written offer, before suit and at a time  
 24 when the person owned the security, to refund the consideration  
 25 paid together with interest on that amount from the date of  
 26 payment to the date of repayment, with interest on:

27 (A) interest-bearing obligations to be computed at the same  
 28 rate as provided on the security; and

29 (B) all other securities at the rate of eight percent (8%) per  
 30 year;

31 less the amount of any income received on the security, and the  
 32 person failed to accept the offer within thirty (30) days of its  
 33 receipt; or

34 (2) if the person received an offer before suit and at a time when  
 35 the person did not own the security, unless the person rejected the  
 36 offer in writing within thirty (30) days of its receipt.

37 (h) No person who has made or engaged in the performance of a  
 38 contract in violation of this chapter or a rule or order under this  
 39 chapter, or who has acquired a purported right under a contract with  
 40 knowledge of the facts by reason of which its making or performance  
 41 was in violation, may base a suit on the contract.

42 (i) A condition, stipulation, or provision binding a person acquiring

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a security to waive compliance with this chapter or a rule or order under this chapter is void.

(j) The rights and remedies specifically prescribed by this chapter are the only rights and remedies created by this chapter, but are in addition to any other rights or remedies that exist at law or in equity.

SECTION 5. IC 23-2-1-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19.5. (a) If the commissioner determines, after **notice and opportunity for** a hearing, that any person has violated this chapter, the commissioner may, in addition to or in lieu of all other remedies, impose a civil penalty upon any person who has violated this chapter. This penalty may not exceed ten thousand dollars (\$10,000) for each violation of this chapter found to have been committed. An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by any aggrieved party pursuant to section 20 of this chapter.

(b) The commissioner may bring any action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under subsection (a).

(c) Penalties collected under this section shall be deposited in the securities division enforcement account established under section 15(c) of this chapter.

SECTION 6. IC 23-2-1-26 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 26. (a) **This section applies to a person engaged in the business of providing advice to others, directly or by means of analyses, reports, or other publications, concerning:**

(1) the value of securities; or

(2) the advisability of:

(A) investing in;

(B) purchasing; or

(C) selling;

securities.

(b) A person described in subsection (a) may not:

(1) employ a device, a scheme, or an artifice to defraud a person; or

(2) engage in an act, a practice, or a course of business that operates or would operate as fraud or deceit upon a person.

SECTION 7. IC 23-2-1-27 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 27. **An administrative action under this chapter survives the death of a person who might have been a respondent.**

SECTION 8. IC 23-2-5-3, AS AMENDED BY P.L.115-2001,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) As used in this chapter, "certificate of registration" means a certificate issued by the commissioner authorizing an individual to engage in origination activities on behalf of a licensee.

(b) As used in this chapter, "creditor" means a person:

- (1) that loans funds of the person in connection with a loan; and
- (2) to whom the loan is initially payable on the face of the note or contract evidencing the loan.

(c) As used in this chapter, "license" means a license issued by the commissioner authorizing a person to engage in the loan brokerage business.

(d) As used in this chapter, "licensee" means a person that is issued a license under this chapter.

(e) As used in this chapter, "loan broker" means any person who, in return for any consideration from any **source procures, attempts to procure, or assists in procuring a loan from a third party or any other person, promises to procure a loan for any person or assist any person in procuring a loan from any third party: or who promises to consider whether or not to make a loan to any person: whether or not the person seeking the loan actually obtains the loan.** "Loan broker" does not include:

(1) any bank, savings bank, trust company, savings association, credit union, or any other financial institution that is:

(A) regulated by any agency of the United States or any state; and

(B) regularly actively engaged in the business of making consumer loans that are not secured by real estate or taking assignment of consumer sales contracts that are not secured by real estate;

(2) any person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the United States Department of Housing and Urban Development, act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs, or act as a correspondent of loans insured by the United States Department of Housing and Urban Development.

(3) any insurance company; or

(4) any person arranging financing for the sale of the person's product.

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(f) As used in this chapter, "loan brokerage business" means a person acting as a loan broker.

(g) As used in this chapter, "origination activities" means ~~establishing the terms or conditions of a loan with a borrower or prospective borrower~~ **communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms.**

(h) **As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).**

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

~~(j)~~ (j) As used in this chapter, "registrant" means an individual who is registered to engage in origination activities under this chapter.

~~(k)~~ (k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls any ownership interest in a person, regardless of whether the person owns or controls the ownership interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

SECTION 9. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, ~~10~~, 17, ~~and~~ 18, **and 21** of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

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a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) Any person who is a creditor, or proposed to be a creditor, for any loan.

**(7) Any person authorized to:**

**(A) sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;**

**(B) issue securities backed by the Government National Mortgage Association;**

**(C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;**

**(D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or**

**(E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development.**

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

(1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification.

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REPORT OF THE PRESIDENT  
PRO TEMPORE

Madam President: Pursuant to Senate Rule 65(b), I hereby report that Senate Bill 469, currently assigned to the Committee on Rules and Legislative Procedure, be reassigned to the Committee on Insurance and Financial Institutions.

GARTON

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SENATE MOTION

Madam President: I move that Senator Zakas be added as coauthor of Senate Bill 469.

CLARK

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SENATE MOTION

Madam President: I move that Senator Paul be added as second author and Senator Lanane be added as coauthor of Senate Bill 469.

CLARK

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## COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 469, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 10, line 38, reset in roman "one-twentieth".

Page 10, line 38, delete "one-tenth".

Page 10, line 38, reset in roman "(0.05%)".

Page 10, line 38, delete "(0.1%)".

Page 10, line 40, reset in roman "two".

Page 10, line 40, delete "three".

Page 10, line 41, reset in roman "fifty".

Page 10, line 41, reset in roman "(\$250)".

Page 10, line 41, delete "(\$300)".

Page 10, line 41, reset in roman "one".

Page 10, line 41, delete "two".

Page 10, line 42, reset in roman "(\$1,000)".

Page 10, line 42, delete "(\$2,000)".

Page 11, line 4, reset in roman "two hundred fifty dollars (\$250)".

Page 11, line 4, delete "one hundred percent (100%)".

Page 20, line 1, delete "A" and insert "**This section applies to a**".

Page 20, line 3, after "of;" insert "**or**".

Page 20, line 4, after "performs" delete "a".

Page 20, line 5, delete "; or" and insert "**a person described in subdivision (1) or (2).**".

Page 20, delete lines 6 through 12, begin a new paragraph and insert:

**"(b) It is unlawful for a person described in subsection (a) to materially aid or induce:**

**(1) an employee of;**

**(2) a broker dealer of; or**

**(3) an agent of;**

**the person described in subsection (a) to violate this chapter."**

Page 20, line 13, delete "(b)" and insert "(c)".

Page 20, line 13, delete "is not liable under" and insert "**has not violated**".

Page 20, line 17, delete "liability exists." and insert "**violation occurs. This subsection does not preclude the assertion of any other defenses for an alleged violation.**".

Page 20, line 26, strike "individual" and insert "**employer of a**

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licensee".

Page 21, line 8, strike "(2) any person".

Page 21, line 8, delete ", while engaged in and".

Page 21, line 8, strike "authorized to sell and".

Page 21, strike lines 9 through 15.

Page 21, line 16, strike "States Department of Housing and Urban Development.".

Page 21, line 16, delete "This".

Page 21, delete lines 17 through 18.

Page 21, line 19, strike "(3)" and insert "(2)".

Page 21, line 20, strike "(4)" and insert "(3)".

Page 21, line 24, delete ":".

Page 21, line 26 delete "by" and insert **"communication with or assistance of a borrower or prospective borrower in the selection of loan products or terms."**

Page 21, delete lines 27 through 30.

Page 21, line 32, after "." insert **"The term "originator" does not include a person who performs origination activities for entities exempt from the definition of loan broker under subsection (e)."**

Page 21, line 38, after "is" insert **"an employee of a licensee and is"**.

Page 22, delete lines 10 through 42.

Delete page 23.

and when so amended that said bill do pass.

(Reference is to SB 469 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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## SENATE MOTION

Madam President: I move that Senate Bill 469 be amended to read as follows:

Page 18, line 6, delete "or section 27 of this chapter," and insert ",".

Page 19, delete lines 39 through 42.

Page 20, delete lines 1 through 16.

Page 20, line 17, delete "IC 23-2-1-28" and insert "IC 23-2-1-27".

Page 20, line 19, delete "28." and insert "**27.**".

Page 20, line 25, reset in roman "individual".

Page 20, line 25, delete "**employer of a licensee**".

Page 20, line 37, before "person," insert "**source procures, attempts to procure, or assists in procuring a loan from a third party or any other**".

Page 20, line 37, strike "promises to".

Page 20, line 38, strike "assist any person in procuring a loan from any".

Page 20, line 39, strike "third party".

Page 20, line 40, after "person." insert "**whether or not the person seeking the loan actually obtains the loan.**".

Page 21, line 28, delete "entities" and insert "**any entity that is not a**".

Page 21, line 29, delete "exempt from the definition of".

Page 21, line 35, delete "an employee of a licensee and is".

Page 21, delete line 42.

Delete page 22.

Re-number all SECTIONS consecutively.

(Reference is to SB 469 as printed January 30, 2004.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 469, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 10, line 27, delete "binding" and insert "**requiring**".

Page 20, reset in roman lines 31 through 39.

Page 20, line 40, reset in roman "(3)".

Page 20, line 40, delete "(2)".

Page 20, line 41, reset in roman "(4)".

Page 20, line 41, delete "(3)".

Page 21, after line 22 begin a new paragraph and insert:

"SECTION 9. IC 23-2-5-19, AS AMENDED BY P.L.230-1999, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, ~~10~~, 17, ~~and~~ 18, **and 21** of this chapter:

- (1) Any attorney while engaging in the practice of law.
- (2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).
- (3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.
- (4) Any broker-dealer, agent, or investment advisor registered under IC 23-2-1.
- (5) Any person that:
  - (A) procures;
  - (B) promises to procure; or
  - (C) assists in procuring;
 a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).
- (6) Any person who is a creditor, or proposed to be a creditor, for any loan.
- (7) **Any person authorized to:**
  - (A) **sell and service a loan for the Federal National Mortgage Association or the Federal Home Loan Mortgage Association;**
  - (B) **issue securities backed by the Government National Mortgage Association;**

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- (C) make loans insured by the United States Department of Housing and Urban Development or the United States Department of Agriculture Rural Housing Service;**
- (D) act as a supervised lender or nonsupervised automatic lender of the United States Department of Veterans Affairs; or**
- (E) act as a correspondent of loans insured by the United States Department of Housing and Urban Development.**

(b) As used in this chapter, "bona fide third party fee" includes fees for the following:

- (1) Credit reports, investigations, and appraisals performed by a person who holds a license or certificate as a real estate appraiser under IC 25-34.1-8.
- (2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.
- (3) The services provided by a loan broker in procuring possible business for a lending institution if the fees are paid by the lending institution.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this chapter is on the party claiming the exemption or classification."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 469 as reprinted February 4, 2004.)

BARDON, Chair

Committee Vote: yeas 13, nays 0.

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